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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 UNITED STATES OF AMERICA ,
11 Plaintiff,
12 vs.
13 SHANE TRAVIS MASSA,
Defendant.

CASE NO. 14CR471 WQH
ORDER

HAYES, Judge:

14 The matter before the Court is the opposition of the Defendant to an award of
15 restitution pursuant to 18 U.S.C. §2259 to four individuals. (ECF No. 37).

16 On April 17, 2014, Defendant entered a plea of guilty to one count of possession
17 of matters containing images of minors engaged in sexually explicit conduct, in
18 violation of 18 U.S.C. §2252(a)(4). In the factual basis for the plea, Defendant admitted
19 that the following facts are true and undisputed:

20 1. That on or about July 31, 2012, while in the Southern District of
21 California, defendant knowingly possessed visual depictions of minors
22 engaged in sexually explicit conduct using a file-sharing program,
23 including a video file titled “(PussyCock-In-W-Tire) Playtoy 8-
11Yr.mpg”, a video file about 1 minutes and 30 seconds long that depicts
24 a prepubescent minor with her ankles bound being vaginally and anally
25 penetrated by an adult male;

26 2. The defendant knew the visual depictions contained in the matters
27 showed minors engaged in sexually explicit conduct;

28 3. The defendant knew that production of such visual depictions involved
use of a minor in sexually explicit conduct; and

4. That the visual depictions had been mailed, shipped, or transported
using any means or facility of interstate and foreign commerce and in and
affecting interstate and foreign commerce or produced using material(s)

1 that had been mailed, shipped, or transported in interstate or foreign
2 commerce, including by computer.

3 5. Defendant also possessed on a computer and several external hard
4 drives with other images of minors engaged in sexually explicit conduct.

5 (ECF No. 24 at 4). Defendant agreed in the Plea Agreement that “if restitution is
6 ordered by the Court under 18 U.S.C. § 2259, the amount of restitution shall include
7 defendant’s total offense conduct, and is not limited to count(s) of conviction.” *Id.* at
8 11.

9 Four individuals have filed claims seeking restitution for losses pursuant to 18
10 U.S.C. § 2259 from the Defendant. Angela requests restitution between \$12,100.00 and
11 \$16,520.00. Cindy requests restitution of \$8,000.00. Amy/Misty, requests restitution
12 of \$27,500.00. Andy/SpongeB requests restitution of \$58,000.00. Each individual has
13 filed extensive materials in support of the request for restitution. (ECF No. 36). The
14 addendum to the presentence report details the claims of each individual. (ECF No. 34).

15 The Government requests that the Court order restitution in the amount of
16 \$5,000.00 for each victim. Defendant asserts that the evidence and material fail to
17 provide the Court with sufficient information to determine a loss attributable to his
18 conduct in this case, that the loss amounts are overstated, and that there is no evidence
19 Defendant caused any direct harm to any of the individuals.

20 ANALYSIS

21 18 U.S.C. § 2259(b)(4) provides that restitution is mandatory for all offenses
22 involving sexual exploitation of a child. 18 U.S.C. § 2259(b)(4) (“The issuance of a
23 restitution order under this section is mandatory.”). A victim is defined to include “the
24 individual harmed as a result of a commission of the crime under this chapter, ...” 18
25 U.S.C. § 2259(c). Restitution is required for the “full amount of the victim’s losses.”
26 18 U.S.C. § 2259(b)(1). Section 2259(b)(3) provides:

27 For purposes of this subsection, the term “full amount of the victim's
28 losses” includes any costs incurred by the victim for--
(A) medical services relating to physical, psychiatric, or psychological
care;

- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income;
- (E) attorneys' fees, as well as other costs incurred; and
- (F) any other losses suffered by the victim as a proximate result of the offense.

18 U.S.C. § 2259(b)(3)

In *Paroline v. United States*, — U.S. —, 134 S.Ct. 1710 (2014), the United States Supreme Court addressed “how to determine the amount of restitution a possessor of child pornography must pay to the victim whose childhood abuse appears in the pornographic materials possessed.” *Id.* at 1716. In *Paroline*, the defendant “admitted to possessing between 150 and 300 images of child pornography, which included two that depicted the sexual exploitation of a young girl ... who goes by the pseudonym ‘Amy’...” *Id.* The Supreme Court explained that “when she was eight or nine she was sexually abused by her uncle in order to produce child pornography.” *Id.* at 1717. The Supreme Court recognized that “these crimes were compounded by the distribution of images of her abuser’s horrific acts, which meant the wrongs inflicted upon her were in effect repeated....” *Id.* The Supreme Court noted that her uncle was prosecuted, required to pay \$6,000 in restitution, and sentenced to a lengthy sentence. The Supreme Court explained that “her functioning appeared to decline in her teenage years” when she learned that “the digital images were available nationwide [and] [t]hough the exact scale of the trade in her images [was] unknown, the possessors to date easily number[ed] in the thousands.” *Id.* at 1717. “The victim sought restitution under § 2259, asking for close to \$3.4 million, consisting of nearly \$3 million in lost income and about \$500,000 in future treatment and counseling costs.... She also sought attorney’s fees and costs.” *Id.* at 1718.

The Supreme Court stated:

The statute defines a victim as “the individual harmed as a result of a commission of a crime under this chapter.” § 2259(c). The words “as a result of” plainly suggest causation. And a straightforward reading of § 2259(c) indicates that the term “a crime” refers to the offense of conviction. So if the defendant’s offense conduct did not cause harm to an individual, that individual is by definition not a “victim” entitled to restitution under § 2259.

1 *Id.* at 1720 (citations omitted). The Supreme Court determined that “[t]he cause of the
2 victim’s general losses is the trade in her images.... and Paroline is part of that cause,
3 for he is one of those who viewed her images.” *Id.* The Supreme Court explained:

4 While it is not possible to identify a discrete, readily definable incremental
5 loss [the Defendant] caused, it is indisputable that he was a part of the
overall phenomenon that caused [the victim’s] general losses.

6 ...
7 It is common ground that the victim suffers continuing and grievous harm
as a result of her knowledge that a large, indeterminate number of
8 individuals have viewed and will in the future view images of the sexual
abuse she endured.... The unlawful conduct of everyone who reproduces,
9 distributes, or possesses the images of the victim’s abuse -including
Paroline- plays a part in sustaining and aggravating this tragedy.

10 *Id.*

11 In this case, Defendant knowingly possessed visual depictions of minors engaged
12 in sexually explicit conduct. Each of the individuals seeking restitution were identified
13 in the material possessed by Defendant. All four individuals have submitted
14 documentation of the harm suffered as a result of a new individual possessing material
15 depicting their childhood abuse. The Court finds that Defendant’s offense conduct has
16 caused harm to the four individuals seeking restitution in this case, qualifying each
17 individual is a “victim” entitled to restitution under section 2259. The cause of the
18 general losses claimed by the victims in this case is the trade of their images. Defendant
19 possessed material depicting each of the four victims using a file-sharing program
20 causing harm to each victim. The materials in the record establish a causal connection
21 between Defendant’s knowing possession of visual depictions of minors engaged in
22 sexually explicit conduct and the losses suffered by each victim as a result of the
23 offense. The evidence of compensable loss submitted by each victim is compelling and
24 reasonable based upon the materials submitted. *See United States v. Doe*, 488 F.3d
25 1154, 1159-1160 (9th Cir. 2007) (“In every circuit to consider the causation
26 requirement of Section 2259, a rule of reasonableness is applied. We will uphold an
27 award of restitution under Section 2259 if the district court is able to estimate, based
28 upon facts in the record, the amount of victim’s loss with some reasonable certainty.”).

In *Paroline*, the Supreme Court rejected the contention “that the victim’s entire

1 losses from the ongoing trade in her images were ‘suffered ... as a proximate result’ of
 2 Paroline’s offense for purpose of § 2259.” *Paroline*, 134 S. Ct. at 1726. The Supreme
 3 Court stated:

4 Where it can be shown both that a defendant possessed a victim’s images
 5 and that a victim has outstanding losses caused by the continuing traffic
 6 in those images but where it is impossible to trace a particular amount of
 7 those losses to the individual defendant by recourse to a more traditional
 8 causal inquiry, a court applying § 2259 should order restitution in an
 9 amount that comports with the defendant’s relative role in the causal
 10 process that underlies the victim’s general losses. The amount would not
 11 be severe in a case like this, given the nature of the causal connection
 12 between the conduct of a possessor like Paroline and the entirety of the
 13 victim’s general losses from the trade in her images, which are the product
 14 of the acts of thousands of offenders. It would not, however, be a token or
 15 nominal amount. The required restitution would be a reasonable and
 16 circumscribed award imposed in recognition of the indisputable role of the
 17 offender in the causal process underlying the victim’s losses and suited to
 18 the relative size of that causal role. This would serve the twin goals of
 19 helping the victim achieve eventual restitution for all her
 20 child-pornography losses and impressing upon offenders the fact that
 21 child-pornography crimes, even simple possession, affect real victims.

22 *Id.* at 1727. The Supreme Court stated:

23 There are a variety of factors district courts might consider in determining
 24 a proper amount of restitution, and it is neither necessary nor appropriate
 25 to prescribe a precise algorithm for determining the proper restitution
 26 amount at this point in the law’s development. Doing so would unduly
 27 constrain the decisionmakers closest to the facts of any given case. But
 28 district courts might, as a starting point, determine the amount of the
 victim’s losses caused by the continuing traffic in the victim’s images
 (excluding, of course, any remote losses like the hypothetical car accident
 described above, see *supra*, at 1721), then set an award of restitution in
 consideration of factors that bear on the relative causal significance of the
 defendant’s conduct in producing those losses. These could include the
 number of past criminal defendants found to have contributed to the
 victim’s general losses; reasonable predictions of the number of future
 offenders likely to be caught and convicted for crimes contributing to the
 victim’s general losses; any available and reasonably reliable estimate of
 the broader number of offenders involved (most of whom will, of course,
 never be caught or convicted); whether the defendant reproduced or
 distributed images of the victim; whether the defendant had any
 connection to the initial production of the images; how many images of the
 victim the defendant possessed; and other facts relevant to the defendant’s
 relative causal role.

29 *Id.* at 1728.

30 In this case, Defendant admitted that he knowingly possessed visual depictions
 31 of minors engaged in sexually explicit conduct using a file-sharing program, including
 32 a specific video and that he possessed on a computer and several external hard drives

1 with other images of minors engaged in sexually explicit conduct. Defendant possessed
 2 images of each of the four victims and each victim has significant and outstanding
 3 losses caused by the continuing traffic in their images. Each victim is entitled to
 4 restitution under 18 U.S.C. § 2259. In order to determine a reasonable amount of
 5 restitution reflecting the harm attributable to Defendant, the Court considers each of the
 6 four victims individually.

7 **RULING OF THE COURT**

8 **Angela**

9 The victim identified as Angela submits materials documenting economic losses
 10 totaling more than \$300,000.00 and requests restitution in the range of \$12,100.00 -
 11 \$16,520.00 for losses and attorney fees attributable to this particular defendant.
 12 “Restitution is requested to help pay for treatment, education, and medication.” (ECF
 13 No. 34 at ¶41). The Addendum to the Presentence Report states in part: “[Angela] is
 14 overwhelmed by the magnitude of victim notification letters that never cease ... [and]
 15 has a feeling of helplessness given the fact the distribution of the images persists.” *Id.*

16 Defendant was found to possess 18,070 images with identifiable victims; 85 of
 17 those images were of Angela. (ECF No. 35 at 5). Defendant was not involved in the
 18 initial production of the material. Defendant had a file sharing program on his computer
 19 which would have contributed to the distribution of the images. As of April 1, 2014,
 20 a total of 482 defendants have been found to possess one or more images of Angela.
 21 The record further shows that seventeen defendants in other cases have been ordered
 22 to pay restitution amounts ranging from \$850.00 to \$5,000.00 for a total amount ordered
 23 of \$25,500.00. (ECF No. 52).

24 The Court will award restitution to Angela in the amount of \$8,000.00. The
 25 Court finds that the losses totaling more than \$300,000.00 submitted by this victim are
 26 reasonable, that this Defendant possessed a significant number of this victim’s images,
 27 and that this victim has outstanding losses caused by this Defendant’s traffic in her
 28 images. This amount represents a reasonable and circumscribed award imposed in

1 recognition of the indisputable role of this offender in the causal process underlying the
2 victim's losses and taking into consideration the relative size of that causal role.

3 **Cindy**

4 The victim identified as Cindy submits materials documenting economic losses
5 totaling \$1,344,963.70 and requests restitution in the amount of \$8,000.00 for losses
6 and attorney fees attributable to this particular defendant. Restitution is requested to
7 help pay for medical and prescription bills, mental health assistance, counseling costs,
8 and attorney expenses. The Addendum to the Presentence Report states, Cindy feels
9 that "she is unable to enjoy her life [because] she [is] 'forced to deal with the aftermath
10 of sexual abuse and the never-ending effects of having pornographic pictures' of her on
11 the internet." (ECF No. 34 at ¶40). "[Cindy] was overwhelmed by the number of
12 victim notifications she received" (ECF No. 34 at ¶40), and "[e]ach notification added
13 to [her] trauma and exacerbated her emotions issues." (ECF No. 35-1 at 3). Cindy
14 decided to opt out of the victim notification system. The materials submitted on behalf
15 of Cindy explain that Cindy struggles to maintain employment and has a vastly lowered
16 earning potential.

17 Defendant was found to possess 18,070 images with identifiable victims; 91 of
18 those images were of Cindy. (ECF No. 35 at 5). Defendant was not involved in the
19 initial production of the material. Defendant had a file sharing program on his computer
20 which would have contributed to the distribution of the images. As of April 1, 2014,
21 a total of 1264 defendants have been found to possess one or more images of Cindy.
22 (ECF No. 35 at 5). The record further shows that 123 defendants have been ordered to
23 pay restitution to this victim in amounts ranging from \$250.00 to \$103,982.00 in a total
24 amount of \$624,381.97. (ECF No. 52).

25 The Court will award restitution to Cindy in the requested amount of \$8,000.00.
26 The Court finds that the economic losses totaling more than \$1.3 million dollars
27 submitted by this victim are reasonable, that this Defendant possessed a significant
28 number of this victim's images, and that this victim has outstanding losses caused by

1 this Defendant's traffic in her images. This amount represents a reasonable and
2 circumscribed award imposed in recognition of the indisputable role of this offender in
3 the causal process underlying the victim's losses and taking into consideration the
4 relative size of that causal role.

5 **Amy/Misty**

6 The victim identified as Misty submits materials documenting economic losses
7 totaling \$8,886,300.00 and requests restitution in the amount of \$27,500.00 for losses
8 and attorney fees attributable to this particular defendant. The materials submitted on
9 behalf of the victim request restitution to help pay for medical services related to
10 physical, psychiatric, and psychological care, physical and occupational therapy or
11 rehabilitation, necessary transportation, temporary housing and childcare expenses, lost
12 income, and attorney fees. The Addendum to the Presentence Report states that
13 "[Misty] continues to feel exploited every time she learns someone is viewing images
14 of her on the internet." (ECF 34 at ¶36).

15 Defendant was found to possess 18,070 images with identifiable victims; 73 of
16 those images were of Misty. Defendant was not involved in the initial production of the
17 material. Defendant had a file sharing program on his computer which would have
18 contributed to the distribution of the images. As of April 1, 2014, a total of 2,239
19 defendants have been found to possess one or more images of Misty. The record further
20 shows that 192 defendants in other cases have been ordered to pay restitution amounts
21 ranging from \$50.00 to \$3,543,471.00 for a total amount ordered in the amount of
22 \$13,025,165.72. (ECF No. 52).

23 The Court will award restitution to Amy/Misty in the amount of \$8,000.00. The
24 Court finds that the economic losses totaling more than \$8.8 million dollars submitted
25 by this victim are not unreasonable, that this Defendant possessed a significant number
26 of this victim's images, and that this victim has outstanding losses caused by this
27 Defendant's traffic in her images. This amount represents a reasonable and
28 circumscribed award imposed in recognition of the indisputable role of this offender in

1 the causal process underlying the victim's losses and taking into consideration the
2 relative size of that causal role.

3 **Andy / SpongeB**

4 The victim identified as Andy submits materials documenting economic losses
5 totaling \$2,121,963.00 and requests restitution in the amount of \$58,415 for losses and
6 attorney fees attributable to this particular defendant. The materials submitted on
7 behalf of the victim request restitution to help pay for psychological counseling costs,
8 income loss, and expenses incurred to submit the restitution request. The materials
9 submitted on behalf of Andy state that he has received over 600 victim notification
10 letters and experiences a daily sense of worry about others viewing images on him on
11 the internet.

12 Defendant was found to possess 18,070 images with identifiable victims; 2 of
13 those images were of Andy. Defendant was not involved in the initial production of the
14 material. Defendant had a file sharing program on his computer which would have
15 contributed to the distribution of the images. As of April 1, 2014, a total of 644
16 defendants have been found to possess one or more images of Andy. The record further
17 shows that 4 defendants in other cases have been ordered to pay restitution amounts
18 ranging from \$1,000.00 to \$1,200 for a total amount ordered in the amount of \$4,200.
19 (ECF No. 52).

20 The Court will award restitution to Andy in the amount of \$1,000.00. The Court
21 finds that the economic losses totaling more than \$2 million dollars submitted by this
22 victim are reasonable, that this Defendant possessed a small number of this victim's
23 images, and that this victim has outstanding losses caused by this Defendant's traffic
24 in her images. This amount represents a reasonable and circumscribed award imposed
25 in recognition of the indisputable role of this offender in the causal process underlying
26 the victim's losses and taking into consideration the relative size of that causal role.

27 IT IS HEREBY ORDERED that at the time of sentencing, the Court will order
28 restitution in the following amount: \$8,000 to Angela; \$8,000 to Cindy; \$8,000 to

1 Amy/Misty; and \$1,000 to Andy/SpongeB. The Government shall provide the
2 necessary addresses to complete the judgment prior to the time of sentencing.

3 DATED: December 9, 2014

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5 **WILLIAM Q. HAYES**
6 United States District Judge
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